

MINUTES

UTAH FUNERAL SERVICE RULES HEARING BOARD MEETING

September 20, 2007

**Room 475 – 4th Floor – 9:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111**

RULES HEARING:

CONVENED: 9:00 A.M.

Rules Hearing

The Rules Hearing was conducted by Judge Masuda Medcalf, Administrative Law Judge. For a transcript of the Hearing, contact Judge Medcalf.

Bureau Manager:

Noel Taxin

Board Secretary:

Karen McCall

Board Members Present:

Reginal V. Ecker, Chairperson

Mary Bearnson

Joseph W. Thalman

Allyn Walker

Ned R. Nordgren

Board Members Absent:

Mark Walker

Vacant Position

DOPL Staff Present:

Mitchell Jones, AG

BOARD MEETING:

CONVENED: 9:08 A.M.

ADJOURNED: 11:50 A.M.

Bureau Manager:

Noel Taxin

Board Secretary:

Karen McCall

Board Members Present:

Reginal V. Ecker, Chairperson

Mary Bearnson

Joseph W. Thalman

Allyn Walker
Ned R. Nordgren

Board Members Absent:

Mark Walker
Vacant Position

Guests:

Kelly Magleby
Shawn Meyers

DOPL Staff Present:

Mitchell Jones, AG

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Swearing in of Ned R. Nordgren as a Board Member

Ms. Taxin conducted the swearing in of Mr. Nordgren as a Board member. **Board members welcomed Mr. Nordgren.**

MINUTES:

The minutes from the May 31, 2007 meeting were read.

Ms. Bearnson made a motion to approve the minutes as read. Mr. Thalman seconded the motion. **The Board vote was unanimous.**

The minutes from the July 11, 2007 meeting were read.

Ms. Bearnson made a motion to approve the minutes as read. Allyn Walker seconded the motion. **The Board vote was unanimous.**

APPOINTMENTS:

10:00 A.M.

Robert Wilcoxon, Probationary Interview

Mr. Wilcoxon met for his probationary interview.

Mr. Nordgren was introduced.

Mr. Ecker conducted the interview.

Mr. Ecker asked Mr. Wilcoxon to update the Board regarding the last 3 months.

Mr. Wilcoxon stated that he was to have completed his

CE by this meeting. He stated that he will be taking the examination for the CE on October 7, 2007 and will submit the documentation of completion. Mr. Wilcoxon stated that the business has been very busy over the last 90 days which has made completing the CE a burden. He stated that he missed his appointment with Dr. Ahern, the therapist, due to his busy schedule.

Mr. Ecker asked if Mr. Wilcoxon has to drive to Las Vegas to take the examination for the CE.

Mr. Wilcoxon responded that he does have to drive to Las Vegas for the examination and plans to go for 1 day only.

Mr. Ecker asked if Mr. Wilcoxon remembers the requirements he was to have completed for the meeting today.

Mr. Wilcoxon responded that he did not remember.

Ms. Taxin asked if he remembers when his CE was due.

Mr. Wilcoxon responded that the CE was to be completed within one year from when his probation started but the Board had given him until this meeting.

Ms. Taxin confirmed that Mr. Wilcoxon is correct that the CE was due within one year which was February 17, 2007 and now it is September 20, 2007 and the CE are not completed. She stated that she is not sure if Mr. Wilcoxon's probation is a priority for him.

Mr. Wilcoxon responded that it is a priority and he is trying to complete the requirements to best of his ability. He stated that running the funeral home is also a priority for him at this time.

Ms. Taxin stated that she understands the business priority but he will not have a license to run the business if he does not meet the requirements of the probation.

Mr. Wilcoxon again stated that meeting the probation requirements are a priority but he has had some difficulty obtaining and retaining good employees. He stated that the 18 hour CE course turned out to be very in-depth and he should have talked with Mr. Ecker more about the class before he decided to take it. Mr. Wilcoxon voiced hating to be in this stupid room with the Board because of his own stupid choices. He stated that the therapist has been helpful and their appointments have been cut back to quarterly but he has had to cancel appointments. Mr. Wilcoxon stated that he is supposed to meet quarterly with his supervisor, Mr. Ballard, but he has requested that Mr. Ballard continue to meet weekly. He stated that due to being so busy at work he has had to cancel the weekly supervision appointments.

Mr. Ecker asked if Mr. Wilcoxon is still sending Mr. Ballard copies of all his preneed contracts.

Mr. Wilcoxon responded that he is still sending Mr. Ballard copies of all preneed contracts.

Mr. Ecker stated that reports have not been received that indicate Mr. Ballard has received copies of all preneed contracts. He stated that the reports need to be more detailed on everything Mr. Wilcoxon and Mr. Ballard review.

Mr. Wilcoxon responded that he will ask Mr. Ballard to be more detailed in the reports.

Ms. Taxin stated that the reports should indicate the dates they have met, how many contracts were reviewed and discussed and other issues that were discussed. She stated that Mr. Ballard needed to report on what Mr. Wilcoxon is doing as he is the supervisor and not just an advocate.

Mr. Ecker stated that Dr. Ahern also needs to submit an in-depth report.

Mr. Wilcoxon responded that he watched Dr. Ahern write the report and put in an envelope to mail to Ms. Taxin.

Ms. Bearnson stated that Mr. Wilcoxen is required to meet regularly with Dr. Ahern and the reports are due quarterly.

Ms. Taxin stated that Dr. Ahern needs to submit his report with an assessment addressing the issues being discussed and the frequency of the therapy appointments. She stated that the last report was received May 6, 2007. Ms. Taxin explained that Dr. Ahern's reports should not address what Mr. Wilcoxen reports but should address the issues he and Mr. Wilcoxen discuss and his assessment of those discussions.

Mr. Ecker requested Mr. Wilcoxen to contact Dr. Ahern and have a report submitted by the first of October 2007 and then submit another report after Mr. Wilcoxen meets with Dr. Ahern. Mr. Ecker stated that the report needs to be specific and detailed regarding the dates of their appointments and the issues being worked on.

Ms. Taxin stated that if Dr. Ahern believes therapy needs to be terminated then he needs to include that recommendation in his report.

Mr. Ecker stated that the report from Jan has not been received. He stated that the last few reports gave detailed information.

Mr. Wilcoxen responded that he talked with Jan a few days ago and she had said the report had been sent.

Mr. Ecker asked if the report was mailed or faxed.

Mr. Wilcoxen responded that he believed the report was faxed but will follow-up with a phone call to the Division when Jan faxes the report.

Mr. Ecker asked if Mr. Wilcoxen has gone through the 12 step program for addiction that the church offers.

Mr. Wilcoxen responded that he has not.

Mr. Ecker encouraged Mr. Wilcoxen to go through

the program. He stated that the program is taught by professionals that could have some mechanisms that might help Mr. Wilcoxon to prevent him from going back into addictions.

Mr. Wilcoxon stated that he knows that he must stay away from the addictions in order to retain his employment.

Ms. Taxin stated that the therapist, supervisor and Jan are the individuals who must verify or confirm to the Board and the Division that the public is safe. She stated that if his probation was terminated and then he re-offended the file does not verify that he has completed the probationary requirements to practice safely. She stated that the therapist, the supervisor and Jan should be giving Mr. Wilcoxon a copy of the reports they are sending so that he is aware of the information going into his file.

Mr. Ecker stated that if Mr. Wilcoxon believes Dr. Ahern is not dealing with his issues then maybe he should see a different therapist.

Mr. Ecker stated that October 1, 2007 is the deadline for a report from Jan and a report from Dr. Ahern. He stated that the deadline is important and if it is not met then Mr. Wilcoxon will be meeting more frequently with the Board. Mr. Ecker stated that the CE was to have been completed by February 2007 and that deadline was not met. He stated that the CE course Mr. Wilcoxon requested to be approved was difficult and the deadline for completion was today and that deadline was not met. He stated that Mr. Wilcoxon should fax a copy of the completion certificate as soon as he receives it so that the CE will be completed. He stated that when requirements are met then the Board can see that he is progressing as there is documentation to back it up. Mr. Ecker stated that Mr. Wilcoxon is out of compliance with his Stipulation and Order and if the requirements are not met additional action may need to be taken.

Ms. Taxin stated that Dr. Ahern's report should

document the following:

- 1. An assessment of Mr. Wilcoxon's current mental status.**
- 2. How Mr. Wilcoxon is coping with the addiction.**
- 3. Dr. Ahern's recommendation for treatment or termination of treatment.**
- 4. Anything else Dr. Ahern deems necessary to inform the Board regarding other issues discussed in therapy.**

She stated that this detailed report must be received prior to November 15, 2007 in order to prepare Mr. Wilcoxon's file for the November Board meeting.

Ms. Taxin stated that the next reports from Mr. Ballard and Jan must also be received prior to the November 15, 2007 Board meeting with Mr. Ballard's report being more detailed. She stated that the Stipulation and Order require weekly supervision meetings and if he and Mr. Ballard are meeting less frequently then the Board needs to address the frequency and make an amendment to the Stipulation and Order. She stated that Mr. Ballard needs to review Mr. Wilcoxon's services and practice, document the number of contracts reviewed, what he observed, issues they have discussed, etc.

An appointment was made for Mr. Wilcoxon to meet again November 15, 2007.

DISCUSSION ITEMS:

Endorsement for Funeral Service Directors

Ms. Taxin explained that most other State issue a license for the Funeral Service Director and a license for the Embalmer. She stated that Utah issued the Funeral Service Director license which includes embalmer. Ms. Taxin stated that it is difficult for the staff to determine if the verification from another State is for Funeral Service Director only or Director and Embalmer. She recommended the Verification of Licensure form in the application be revised for Funeral Service Director and Embalmer.

Board members agreed to the application change.

Contract Questions

Ms. Taxin explained that a contract question came up when she and Mr. Magleby were reviewing the Law for revisions. She stated that the establishment is still required to use the same contracts but she no longer reviews to approve those contracts on a regular basis when establishments update their contracts. Ms. Taxin asked if it is common practice for the establishment to have graded limited death benefits and current prevailing prices.

Mr. Magleby asked why the establishment has to guarantee benefits if the insurance company does not guarantee.

Allyn Walker responded that most establishments do guarantee the benefits but they have the right to charge the current prices.

Ms. Taxin stated that she believes the issue is if the individual signed a contract and then passed away within a few months. She asked if the establishment would honor the contract or if the family would be required to pay more.

Allyn Walker responded that it would depend on the prices staying the same or going up. He stated that it would also depend on if the contract guaranteed the price when you purchased the product.

Ms. Taxin stated that she had an inquiry regarding the issue and has responded that she cannot give legal advice but the burden is on the establishment to be sure the language in their contracts meet the requirements in the Law. She stated that she advised this inquirer to seek legal counsel.

The Board agreed with Ms. Taxin's response that the inquirer should seek legal counsel.

Gephardt Funeral Story

Ms. Taxin reviewed Gephardt's news article with the Board.

Mr. Ecker stated that Deseret Memorial Inc. has taken care of the situation Gephardt reported on.

He explained that the contract was not with Deseret but was with the Cemetery who sold the family 2 vaults. He stated that the contract was not a valid contract and Deseret assisted the family with the issues.

Allyn Walker stated that the Gephardt's news brief generated 150 to 200 phone calls to his establishment to be sure client's contracts were in order.

Mr. Magleby stated that the Association did a response and published it in their newsletter.

Ms. Taxin stated inquirers to the Division have been informed to contact the establishment and to review their contracts.

2008 Board Meeting Schedule

The Board noted the following dates for the 2008 Board meetings: Wednesdays, February 20, May 21, August 20 and November 12, 2008.

Vacant Position

Ms. Taxin informed the Board that Mr. McMillan resigned due to a conflict of interest. She stated that his position is still vacant.

Mr. Magleby responded that the Association has a name to submit and will send it in this week.

The Board thanked Ms. Taxin for the information and Mr. Magleby for following up with a name.

Kelly Magleby

Mr. Magleby asked if the Board reviewed the proposed Rules today.

Ms. Taxin responded that there was a Rules hearing and there were no public comments. She stated that if there are no public comments the Rules will become effective on October 22, 2007. Ms. Taxin asked Mr. Magleby if the Association had concerns or comments.

Mr. Myers responded that the Association did not have any concerns or comments.

Ms. Taxin asked Mr. Magleby and Mr. Myers to

give her a draft of the proposed Law changes and the Board could review the draft at the November meeting.

Mr. Magleby then referred to areas in the Law that conflict. He stated that if the trust account is short funds for an individual who passes away then the establishment pays the difference and if the funds are over the amount the establishment will retain the monies.

Ms. Taxin asked if families believe they should have the balance of funds.

Mr. Magleby responded that she is correct.

Mr. Myers stated that it is seldom that there are more funds in the death benefit than what the funeral service costs. He stated that it hurts the establishment to take the loss on preneed sales. He stated that most establishments are ethical and will return any balance of funds to the family of the deceased.

Mr. Magleby stated that different establishments may have different prices for products and services. He stated that a guarantee is his decision to make and it is between him and the client. He stated that in the future most funeral products being provided will be guaranteed products with the establishment taking the risk and the loss. He stated that the establishment should have the ability to also take gain if there is any.

Ms. Taxin suggested the Association list the requirements so the document is easier to review.

Mr. Myers stated that he is not sure the Board did a good thing in taking out the requirement of a Utah Law and Rule examination. He stated that he has been giving his interns an examination that he developed.

Ms. Taxin responded that the Board submitted and reviewed questions to be included in the application for a Utah Laws and Rules examination. She stated that after the Rules become effective the examination will be included in the applications. She stated that with the examination in the

applications the applicants will not be required to pay a separate fee for the examination. Ms. Taxin stated that the applicants will be required to pass the examination with 100% correct or retake the examination.

Mr. Myers stated that cremation is another area that needs to be reviewed.

Ms. Taxin stated that as soon as the language for cremation is written to submit it to her for review.

Mr. Myers stated that submitting all contracts for approval and an annual audit report is no longer required. He stated that nationally both are being encouraged as that is a way to document accountability.

Ms. Taxin responded that the attorneys will not take the liability by approving the contracts. Ms. Taxin also stated on the initial application for licensure all applicants will produce a copy of their contracts for review. She stated that it is then required when the establishment updates that the provider will be responsible to ensure their contracts meet the Law and Rules requirements. She stated that the annual report is still required and the Division may audit them. She stated that the establishment now is required to retain the annual report and not submit it each year. Ms. Taxin stated that she could do an audit of the annual reports at renewal time and if the reports are not submitted the establishment license would not be renewed.

Mr. Myers requested Ms. Taxin do audits at renewal time. Mr. Myers stated that there is no need for a requirement if there is not going to be a follow-up to be sure the requirement is met.

CORRESPONDENCE:

ICCFA Magazine

The Board noted the ICCFA Magazine. Ms. Bearson stated that she does not receive the magazine and asked if she could review the magazine as she does not receive it at home.

The Board recommended Ms. Bearnson take the magazine to review.

The Conference

The Board reviewed the Conference registration information. **Each Board member took a form.**

Mr. Thalman asked if any Board members attend the conferences.

Allyn Walker responded that Mr. Sanderson, an Association member, attends the meetings as the Association will fund the travel for him. He stated that Mr. Sanderson reports to the Board any important issues. He stated that the conferences are usually in April.

Ms. Taxin retained a form and stated that she will put it in her rotation to attend in 2008.

Paul Harris Letter

Mr. Harris submitted a letter regarding a standing agenda item for the Annual meeting.

Ms. Taxin read the letter to the Board.

The Board noted the information with no comments.

NEXT MEETING SCHEDULED FOR:

November 15, 2007

ADJOURN:

The time is 11:50 am and the meeting is adjourned.

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

November 15, 2007
Date Approved

(ss) Reginal V. Ecker
Chairperson, Utah Funeral Service Licensing Board

October 30, 2007
Date Approved

(ss) Noel Taxin
Bureau Manager, Division of Occupational &
Professional Licensing